

SUPERIOR COURT OF THE STATE OF WASHINGTON
KITSAP COUNTY

CITY OF BREMERTON, a Washington
municipal corporation,

Plaintiff,

v.

WILLIAM SESKO and NATACHA SESKO,
and their marital community,

Defendants.

No. 97-2-01749-3

DEFENDANTS' RESPONSE TO
MOTION FOR SANCTIONS

I. INTRODUCTION

The undersigned submits this response to the City of Bremerton's Motion for Sanctions for Defendant's Discovery Violations. I have served and filed a notice of intent to withdraw, a copy of which is attached to this response, but withdrawal is not effective until Monday, June 29, 2009. I have forwarded the City's motion to Natacha Sesko and to her new attorney (see below), as well as this response. I specifically asked for comment about this response. I have heard nothing, and am not aware of Ms. Sesko or her new attorney filing a response, and so simply advise the Court of my concerns about the City's motion.

1 More specifically, on April 17, 2009, Natacha Sesko told me that she had retained
2 Charmaine Clark to represent her in this and other matters adverse to the City of Bremerton.
3 Ms. Clark subsequently confirmed this fact to me personally. Accordingly, I made arrange-
4 ments for my firm's files to be delivered to Ms. Clark. At the time the files were transferred, I
5 signed notices of withdrawal and substitution prepared by Ms. Clark, expecting Ms. Clark to
6 serve and file the notices promptly. I also informed Mr. Koontz that Ms. Clark would be
7 representing Ms. Sesko going forward; Ms. Clark apparently confirmed this with Ms. Clark. I
8 then heard nothing for several weeks from Ms. Clark or Ms. Sesko.

9 Ms. Clark obviously failed to serve and file the notices of withdrawal and substitution.
10 However, on May 28, 2009, she emailed another notice of withdrawal and substitution to me,
11 which I immediately signed and returned to her. Again, Ms. Clark failed to serve and file the
12 notices.

13 Since May 28, 2009, despite several attempts to reach her by phone and email, I have
14 heard nothing from Ms. Clark. I have encouraged Ms. Sesko to have Ms. Clark get in touch
15 with me but to no avail. My call this week to Ms. Clark met with the same "memory is full"
16 message Mr. Koontz experienced, and my call to Ms. Sesko concerning this motion has not
17 been returned.

18 Accordingly, I have no specific authority to represent Ms. Sesko but nonetheless remain
19 attorney of record until Monday, June 29, 2009, and accordingly submit this response.
20 Yesterday, June 24, I emailed this response both to Ms. Sesko and Ms. Clark asking for
21 direction and stating that I would file the response unless I heard contrary direction by
22 10:00am. I have heard no response.
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II. FACTS

The facts are relatively simple, despite the City's long recitation. The City has a judgment. It served a notice of deposition on counsel of record for Ms. Sesko identifying June 15, 2009, as the deposition date. Ms. Sesko failed to appear. A complicating factor is the appearance (and subsequent disappearance) of Ms. Clark, whose whereabouts at present are unknown to me.

In this motion, the City seeks three things. First, it seeks an award of costs and fees, despite the fact that Mr. Koontz is a salaried employee of the City of Bremerton and as such the City incurred no out-of-pocket costs for the time Mr. Koontz spent preparing this motion. Second, the City seeks to have the court declare that the City has exercised due diligence to ascertain whether Ms. Sesko has sufficient nonexempt personal property to satisfy the judgment and that the City's belief that she does not is reasonable. Third, the City asks the court to declare that the City has exercised due diligence to determine whether Ms. Sesko's Arsenal Way property is occupied or otherwise claimed by Ms. Sesko as a homestead.

None of these sanctions are merited at this point.

III. ARGUMENT

A. Attorneys Fees

In brief, the City should not recover attorneys fees for the time Mr. Koontz, a salaried employee, spent preparing this motion. There is no evidence that Mr. Koontz could have spent his time doing other things, and there is no evidence of the actual hourly cost to the City of Mr. Koontz's employment. Suggesting that the City is entitled to a hypothetical rate applicable to private practitioners in Kitsap would vastly overstate the City's actual outlay.

1 **B. Due Diligence re Nonexempt Personal Property**


2 I personally know very little about Ms. Sesko's nonexempt personal property and have
3 for the reasons stated above been unable to obtain relevant information from Ms. Sesko.
4 Although the court has broad discretion in fashioning a remedy for a discovery violation, I
5 would argue in light of the confusion surrounding Ms. Clark's whereabouts and her role in this
6 matter that it would be more appropriate for the court to set a deadline (I would suggest thirty
7 days) by which Ms. Sesko must present herself at a mutually-agreed time and place for
8 deposition in lieu of supplemental proceedings.

9 **C. Due Diligence re Homestead**

10 It is my understanding that Ms. Sesko in fact resides at the Arsenal Way property and
11 that she claims it as a homestead. Nevertheless, before the court considers sanctions in the
12 nature of declarations concerning the City's "due diligence," I believe it more appropriate, for
13 the reasons suggested in the preceding section, for the court to require Ms. Sesko to present
14 herself not later than thirty days from the date of the order at a mutually-agreed time and place
15 for deposition in lieu of supplemental proceedings.

16 DATED this 25th day of June, 2009.

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18 Davis Wright Tremaine LLP
 Attorneys for Defendants

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20 By 
 Alan S. Middleton, WSBA No. 18118

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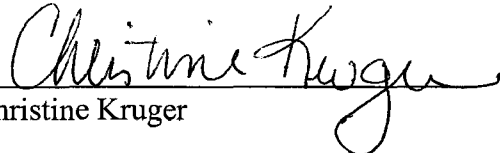
DECLARATION OF SERVICE

I, Christine Kruger, hereby certify and declare under penalty of perjury under the laws of the State of Washington that on June 25, 2009, I served a copy of the foregoing document on the following attorneys, via email and first-class mail, at the following addresses:

Mark E. Koontz
Bremerton Assistant City Attorney
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Charmaine L. Clark
Charmaine L. Clark, PLLC
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Executed this 25th day of June, 2009, at Seattle, Washington.


Christine Kruger